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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

C.G., a Minor, etc. et al., Plaintiffs and Appellants, v. LOS ANGELES COUNTY OFFICE OF EDUCATION, Defendant and Respondent.	B278093 (Los Angeles County Super. Ct. No. BC548787)

APPEAL from a judgment of the Superior Court of Los Angeles County, Donna Fields Goldstein, Judge. Reversed.

Panish, Shea & Boyle, Brian J. Panish, Rahul Ravipudi, Erika Contreras; Esner, Chang & Boyer, Holly N. Boyer and Shea S. Murphy for Plaintiffs and Appellants.

Collins Collins Muir + Stewart, Tomas A. Guterres, Michael B. McDonald and James C. Jardin for Defendant and Respondent.

C.G. was sexually molested by her teacher Delvon Christopher Jackson (Jackson). Through her guardian ad litem, C.G. sued the Los Angeles County Office of Education (LACOE) and the Glendale Unified School District (the District)[1] alleging they were negligent in failing to protect her from Jackson and in conducting a background investigation before hiring him. LACOE successfully moved for judgment on the pleadings on the ground that C.G. failed to allege a statute that imposed a mandatory duty directly on LACOE. In her appeal from the ensuing judgment dismissing LACOE from the action, C.G. contends she has also alleged LACOE's vicarious liability for the negligence of its employees. We agree with C.G. and reverse the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. The operative complaint

Viewing the second amended and operative complaint according to the usual rules (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 866 (*Hart*)), it alleges that Jackson was an instructor in the Regional Occupational Program (ROP) located at the District's high school. The ROP offers specialized technical education to expose students to careers in

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[1] C.G. also sued the District, the County of Los Angeles, and Jackson, none of whom is a party to this appeal. Jackson pled no contest to committing lewd acts on a child (Pen. Code, § 288, subd. (c)(1)), a felony. The court sentenced Jackson to three years in state prison and ordered him to register as a sex offender. The District obtained summary judgment in its favor and C.G. filed a separate appeal from the ensuing judgment dismissing it from her lawsuit (B277157).

fields such as firefighting and policing. (Ed. Code, § 52300.)[2] C.G. was a 14-year-old 9th grader in the ROP. Using his position of authority as a teacher and falsely representing he was a former Inglewood police officer, Jackson created a special relationship with C.G. to sexually assault her four times on campus. The complaint's first and second causes of action against defendants LACOE and the District allege that Does 1 through 50 were employees of the two public-entity defendants and acted within the course, scope, and authority of such employment.

In general terms, C.G. alleges on information and belief that LACOE is "an approved ROP . . . sponsor for the California Commission on Teacher Credentialing" (the Commission). She alleges that LACOE had an affirmative and mandatory duty to monitor, supervise, and protect students from reasonably foreseeable harm while on campus and a duty to adequately investigate, hire, evaluate, monitor, and supervise its instructors. C.G. alleges that LACOE negligently and recklessly performed or failed to perform the required screening and background check of Jackson. Had LACOE properly investigated, it would have learned that contrary to Jackson's representations, he had never been employed as a police officer in the Inglewood Police Department, but instead worked there part time in parking control, and that the police department fired him for committing lewd acts on women while on the job. C.G. alleges that LACOE negligently placed Jackson as an instructor at the high school thereby exposing its students to him.

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[2] All further statutory references are to the Education Code unless otherwise indicated.

The first cause of action, entitled negligence, alleges among other things that LACOE is vicariously liable for the negligence of its employees on the basis of Government Code sections 815.2, 815.4, 820, subdivision (a), and Civil Code section 1714, in failing to supervise, monitor, and protect C.G. from Jackson.

The second cause of action seeks damages for negligent hiring, retention, supervision, and training. Citing section 52301 concerning the establishment and maintenance of ROPs, the pleading alleges LACOE's vicarious liability for the negligent failure of its employees to perform the required background investigation of Jackson. The complaint also alleges LACOE's direct liability for breach of duties imposed by a series of Education Code provisions and regulations governing the requirements for obtaining a teaching credential.

II. LACOE's various challenges to the complaint

After answering the operative complaint, LACOE moved for summary judgment on the ground it was not a school district and hence did not owe C.G. the duties alleged. The motion was denied. Thereafter, a different trial judge granted the District's motion for summary judgment on the ground that none of the statutes identified by C.G. in this complaint imposes a mandatory duty on a public entity to supervise C.G. or to investigate and hire Jackson.

The District's successful motion spurred LACOE to move for judgment on the pleadings. Imitating the District's legal argument, LACOE contended that as a public entity, it is not liable for an injury, except as provided by statute (Gov. Code, § 815), and that C.G. failed to name a statute that imposes a mandatory duty of care on LACOE to monitor and supervise students on the high school campus, or to investigate and hire

instructors. LACOE explained that its only connection to the case stemmed from the fact that it forwarded Jackson's application for a teaching credential to the Commission, but that it was "never responsible for *investigating* Jackson's background information [or] . . . for issuing his preliminary teaching credential." (Italics added.)

LACOE also argued that Government Code sections 818.4, 820.2, and 821.2 immunized it from liability for issuing Jackson a teaching credential.

III. C.G.'s opposition

C.G. replied that as "an educational entity, LACOE had a mandatory duty to ensure student safety on campus." She reasoned that LACOE "*administer*[*ed*]" the ROP and was vicariously liable for the negligence of its employees in that administration. (Italics added.) She argued that LACOE stood in a special relationship to its students similar to that outlined in cases holding that school districts having custody and control over children could be held liable for the failure of their employees to protect the minors in their charge.

As for the second cause of action for negligent hiring and retention, C.G. premised her theory of liability on the same authorities delineating the vicarious liability of school districts for negligent hiring of a molester if the district's personnel knew or should have known of the hiree's prior sexual misconduct. No immunity applied, she argued.

IV. LACOE's reply

LACOE replied that there is no statute that imposes a duty on it to "properly administer" the ROP program. It also argued that the complaint lacks any allegations that LACOE failed to

properly administer that program. For example, LACOE asserted that the complaint contains no allegations about LACOE's duties in connection with the ROP, or of a causal connection between the ROP itself and the incidents at issue. Jackson was an employee of the District who hired and screened him. It argued that the District's witnesses testified that LACOE was not responsible for monitoring C.G. or Jackson on the District's campus; and the Commission, not LACOE, was the entity that evaluated Jackson's fingerprints from the Department of Justice and issued Jackson's teaching credentials.

V. The ruling

The trial court granted LACOE's motion and denied leave to amend. The court ruled that C.G. failed to allege a statute that imposed a duty on LACOE to supervise C.G. and failed to allege that LACOE hired Jackson. After the court entered judgment in LACOE's favor, C.G. filed her timely appeal.

DISCUSSION

I. Standard of review

" 'A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. (Code Civ. Proc., § 438, subd. [(c)(1)(B)(ii)].) A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review.' (*Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672.) 'All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law. . . .' (*Ibid.*) Courts may consider judicially noticeable matters in the motion as well." (*People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777.) We give

the factual allegations a liberal construction (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 515–516) and " 'the complaint a reasonable interpretation, reading it as a whole and its parts in their context.' " (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126; *Hart*, *supra*, 53 Cal.4th at p. 866.)

II. Duty

A. *Vicarious liability of public entities*

Under the California Tort Claims Act, public entity tort liability is exclusively statutory (Gov. Code, § 815)[3] and has two sources: (1) the public entity's direct liability based on its own conduct and legal obligations, and (2) the public entity's liability based on respondeat superior principles, for the misconduct of its employees that occurred in the scope of their employment. (*Zelig v. County of Los Angeles*, *supra*, 27 Cal.4th at p. 1127.) Relying on Government Code section 815.6, LACOE's motion for judgment on the pleadings focused on whether C.G. named an enactment that imposes a mandatory duty directly on it to protect C.G.

Yet, the complaint also alleges another basis for public-entity liability, namely LACOE's vicarious liability for the negligence of its employees.

Government Code section 815.2 provides, "A public entity *is liable* for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment

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[3] Government Code section 815 reads: "*Except as otherwise provided by statute*: [¶] (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Italics added.)

if the act or omission would . . . have given rise to a cause of action against that employee." (*Id.*, subd. (a), italics added.) Government Code section 820 establishes the liability of public employees: except as otherwise statutorily provided, "a public employee is liable for injury caused by his act or omission to the same extent as a private person." " 'Thus, "the general rule is that an employee of a public entity is liable for his torts to the same extent as a private person ([*id.*,] § 820, subd. (a)), and the public entity is vicariously liable for any injury which its employee causes ([*id.*,]§ 815.2, subd. (a)) to the same extent as a private employer ([*id.*,]§ 815, subd. (b))." ' " (*Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1854.)[4]

1. Duty based on a special relationship

The question before us is whether LACOE had a duty to protect C.G. from reasonably foreseeable criminal conduct at the hands of Jackson, or a duty to conduct an adequate background investigation of Jackson during the hiring process. While the employer of the teacher is not vicariously liable for the teacher's sexual misconduct (see *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 447–452), it can be vicariously liable for the negligent hiring, retention, or supervision of that teacher if its employees knew or should have known that the teacher posed a

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[4] LACOE also argued that C.G.'s complaint fatally omitted to name the employees who allegedly breached their duties to her. However, C.G. sufficiently alleges that Does 1 through 50 were employees of LACOE and were acting in the course and scope of their employment. (See, e.g., *Hart*, *supra*, 53 Cal.4th at p. 872 [at pleading stage, plaintiff need not identify defendant's employees by name].)

reasonably foreseeable risk of harm to students. (*Hart*, *supra*, 53 Cal.4th at p. 870.)

Whether a duty exists is a question of law. (*Doe v. United States Youth Soccer Assn., Inc.* (2017) 8 Cal.App.5th 1118, 1128 (*Doe*).) Duty "may be imposed by law, be assumed by the defendant, or exist by virtue of a special relationship." (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 985.) Although generally, there is no duty to act to protect others from the conduct of third parties (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 235), "[a] defendant may owe an affirmative duty to protect another from the conduct of third parties if he or she has a 'special relationship' with" the plaintiff. (*Ibid.*)

C.G.'s theory is that LACOE is vicariously liable for the failure of its employees to protect her from Jackson's criminal acts and to undertake an adequate background investigation of Jackson before hiring him. That is, C.G.'s causes of action are premised on LACOE's employees' alleged omission to act. LACOE is only liable under these circumstances if it stood in a special relationship to C.G. (*Doe*, *supra*, 8 Cal.App.5th at p. 1129.)

Schools districts long have had a special relationship with the students under their control and supervision giving rise to a duty of their employees to use reasonable measures to protect pupils against abuse from foreseeable sources, including teachers, they know or have reason to know are prone to such abuse. This special relationship also gives rise to a duty to act reasonably when investigating and hiring teachers. (*Hart*, *supra*, 53 Cal.4th at pp. 869–870.)

This special relationship stems from "the mandatory character of school attendance and the comprehensive control

over students exercised by school personnel, 'analogous in many ways to the relationship between parents and their children.' " (*Hart*, *supra*, 53 Cal.4th at pp. 869–870.) This "protective duty is appropriate in light of the fundamental public policy favoring measures to ensure the safety of California's public school students" (*id*. at p. 870, fn. 3, citing Cal. Const., art. I, § 28, subd. (a)(7) ["students 'have the right to be safe and secure in their persons' "]), and given the "importance to society of the learning activity which is to take place in public schools" (*Rodriguez v. Inglewood Unified School Dist*. (1986) 186 Cal.App.3d 707, 714; Pen. Code, § 627; Ed. Code, §§ 32261, 48200).

Our Supreme Court in *Hart*, *supra*, 53 Cal.4th at page 871 clarified that "[r]esponsibility for the safety of public school students is not borne solely by instructional personnel. School principals and other supervisory employees, to the extent their duties include overseeing the educational environment and the performance of teachers and counselors, also have the responsibility of taking reasonable measures to guard pupils against harassment and abuse from foreseeable sources, including any teachers or counselors they know or have reason to know are prone to such abuse."

2. The special relationship between LACOE, as the ROP's school district, and C.G.

LACOE is a county-wide educational agency (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 207 (*Today's Fresh Start*)) created by the Constitution (Cal. Const., art. IX, §§ 3 & 7). The county superintendent is the head of the county office of education and the county board is its governing board. (*Today's Fresh Start*, at

p. 207, fn. 4.) Among the statutory duties of county offices of education are the adoption of rules and regulations for their governance, keeping records of their proceedings, approving budgets, and holding public hearings. (Ed. Code, §§ 1040–1047.) Additionally, "[c]ounty offices of education support school districts by, among other things, providing or helping formulate new curricula and designing business and personnel systems." (*San Jose Unified School Dist. v. Santa Clara County Office of Education* (2017) 7 Cal.App.5th 967, 971.)

Generally, county boards of education do not operate public schools. (*Today's Fresh Start*, 57 Cal.4th at p. 218.) However, sections 52301 and 52310.5, subdivision (c) empower county superintendents to establish and maintain ROPs.[5] ROPs are specialized programs designed by the Legislature to provide technical education to students, regardless of the geographical

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[5] Section 52301, subdivision (a) reads: "The county superintendent of schools of each county, with the consent of the state board, *may establish and maintain, or with one or more counties may establish and maintain, a regional occupational center, or regional occupational program*, in the county to provide education and training in career technical courses. *The governing boards of any school districts* maintaining high schools in the county *may, with the consent of* the state board and of *the county superintendent of schools*, *cooperate in the establishment and maintenance of a regional occupational center or program* . . . . A regional occupational center or program may be established by two or more school districts maintaining high schools through the use of the staff and facilities of a community college or community colleges serving the same geographic area as the school districts maintaining the high schools, with the consent of the state board and the county superintendent of schools." (Italics added.)

location of the students' residence in a county or region. (3 Witkin, Summary of Cal. Law (10th ed. 2005) § 327, p. 419.)

ROPs are maintained by, and are subject to the authority and control of, their governing boards. (§ 52310.5, subd. (a).) Among other things, governing boards possess "final authority to formally hire certificated employees" and may immediately suspend employees on receipt of written charges of certain types of misconduct. The governing board's administrators and supervisors have the power to propose hiring a teacher and to file charges leading to a teacher's suspension or termination. (*Hart*, *supra*, 53 Cal.4th at p. 871; *California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist*. (1997) 14 Cal.4th 627, 631.)

The governing board of an ROP that is "maintained by a county superintendent of schools *is the county board of education*" (§ 52310.5, subd. (c), italics added); the "governing board of a[n] [ROP] maintained by a single school district is the governing board of [that] school district" (*id*., subd. (b)). Thus, in some instances county boards are the governing boards for ROPs operated by county offices of education. (§ 52301, subds. (a) & (b).)

Here, C.G.'s complaint alleges that LACOE was an approved ROP program sponsor for the Commission, and "is authorized to issue Career Technical Educational Teaching Credential[s] to individuals who meet the requirements for either a preliminary or a clear credential." Insofar as C.G. premises LACOE's special relationship with her on its administration of the application process for teaching credentials, she is

wrong: statutorily, the Commission, not LACOE, is the body that issues teaching credentials. (§ 44350, subd. (b).)[6]

Nonetheless, C.G. alleges in her complaint that LACOE "had an affirmative and mandatory duty pursuant to . . . Sections . . . 52300 [and] 52301 . . . to adequately and properly investigate, screen, hire, train, place, and evaluate its instructors . . . and to take all reasonable steps necessary to protect its students, including [herself], from reasonably foreseeable harm caused by unfit and dangerous individuals hired as instructors." Thus, she has alleged that LACOE was the ROP's school district. (§§ 52301 & 52310.5, subds. (a) & (c).)

If LACOE operated the ROP, it would stand in the same special relationship with its students as would any school district. To the extent that LACOE's employees set the standards for hiring teachers, determined who would have custody and supervision of students, and oversaw the educational environment and performance of teachers, they would have a duty to use reasonable measures to protect ROP students against foreseeable abuse by third parties they knew or should have known were predisposed to abusing, and to act reasonably when investigating and hiring those who have custody and control over the ROP students. (*Hart*, *supra*, 53 Cal.4th at p. 871.) LACOE did not raise any immunities to these allegations and so we do not address them.

As confirmation that she could amend her complaint, C.G. points to all of the evidence she submitted in her successful

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[6] Section 44350, subdivision (b) reads: "In order to ensure the timely processing of an application for a credential . . . the *commission* shall process an application within 50 business days of receipt." (Italics added.)

opposition to LACOE's summary judgment motion, and in particular to the contract between LACOE and the District for participation in the ROP in the academic year during which she was abused. That contract allocates between these two defendants responsibilities for hiring staff and teachers, training and evaluating teachers, and for operating the ROP. Given the procedural posture before us, we need not analyze the nature or allocation and scope of responsibilities between LACOE and the District.

LACOE argues that C.G. could not amend to allege a special relationship "because she fails to plead any . . . facts tending to show that LACOE knew or had reason to know that Jackson posed a risk of harm to students." To be sure foreseeability is a factor to be considered in determining whether a special relationship exists between a defendant and a plaintiff. (See *Doe*, *supra*, 8 Cal.App.5th at p. 1128.) But, the complaint already alleges what LACOE should have known: it alleges that had LACOE properly conducted a background check of Jackson, it would have learned that he was not qualified for his position and was fired from his job with the Inglewood Police Department for committing lewd acts on women while in the course of his employment. The question before us is whether LACOE stands in a special relationship to C.G. giving rise to a duty on the part of its employees to protect her and a duty to properly investigate and hire ROP teachers. (*Hart*, *supra*, 53 Cal.4th at pp. 869–870 & fn. 3.) Whether C.G. can *prove* that LACOE's employees knew or should have known of Jackson's sexual propensities is not a question we address in this appeal from the grant of a motion for judgment on the pleadings.

Finally, we acknowledge that at face value the allegations of this complaint appear to be at odds with the position C.G. took in opposition to the motions for summary judgment brought by the District and LACOE. The complaint alleges that both the District and LACOE hired and supervised Jackson. However, we are at the pleading stage in this appeal and C.G. is entitled to allege alternative theories. LACOE did not point us to any admissions made by C.G. in opposition to the summary judgment motions that would preclude her from alleging and proving that LACOE and the District administered the ROP and hired or supervised Jackson.

The trial court erred in granting LACOE's motion for judgment on the pleadings and dismissing it from the lawsuit. In view of our holding that C.G. has stated claims in the first and second causes of action on the theory of vicarious liability, we need not address the contentions concerning the direct liability of LACOE.

DISPOSITION

The judgment is reversed. Appellants are awarded their costs of appeal.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

LAVIN, Acting P. J.

EGERTON, J.